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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 453

JOSEPH P. RUTH, an individual,
Petitioner,

vs.

BLUE RIVER CONSTRUCTORS, an unincorporated association, and MID-VALLEY, INC., S. A. HEALY CO., J. A. JONES CONSTRUCTION COMPANY, A. S. HORNER CONSTRUCTION CO., INC., CHAS. H. TOMPKINS CO., COLORADO CONSTRUCTORS, INC., co-members comprising the unincorporated association BLUE RIVER CONSTRUCTORS, and THE CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS,

CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, acting by and through its BOARD OF WATER COMMISSIONERS, **Third Party Plaintiff,**

vs.

FIREMAN'S FUND INSURANCE COMPANY and THE AETNA CASUALTY AND SURETY COMPANY, **Third Party Defendants, Respondents.**

PETITION FOR REHEARING UNDER RULE 58

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November 14, 1966

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FIREMAN'S FUND INSURANCE COMPANY and THE AETNA CASUALTY AND SURETY COMPANY, **Third Party Defendants, Respondents.**

PETITION FOR REHEARING UNDER RULE 58

I request a rehearing under Rule 58 of my petition for writ of certiorari to demonstrate that under load diesel exhaust contains one-tenth of one per cent (0.10%) of toxic synthetic anhydrous nitric acid gas and proving this toxic gas is inherent in diesel combustion.

The value of my patent No. 2,611,680 of September, 1952, is dependent upon showing that diesel exhaust is laden with toxic nitric acid gas which my patent absorbs from the diesel exhaust and then, as depicted in Exhibit

"E," neutralizes it to a non-toxic calcium nitrate salt and the solution pH of 6.2 shows almost complete neutralization. I was prevented by my attorneys from making this demonstration which would have validated my patent in my suit before the Denver District Court, Civil Action 6679, against Blue River Constructors, et al. In the court's search for truth why did they not want the court to see Exhibit E demonstrated?

Well, if the public knew the millions of diesel horsepower now operating in our cities of which General Motors has made and sold 90% on the basis their diesel bus exhaust contained no harmful parts (GM diesel bus exhaust Exhibit I) when actually it contains toxic nitric acid gas (954 Parts Per Million by their own analysis) and Exhibit E would have shown that their 2-cycle diesel engine was wholly responsible for the toxic gray olefin smog (Exhibits A, B, C and D), that now covers our cities, (Exhibits G and H) General Motors could then no longer make the public's autos the scapegoat for the toxic gray olefin smog (Exhibits G and H), that now engulfs our cities from their 2-cycle diesel bus engines. My attorneys should have permitted me to demonstrate Exhibit "E" to the court if they had wanted my patent held valid in Denver as it had been held valid in Cincinnati. Judge Christenson in Denver holding my patent invalid did not have the evidence to hold my patent valid that Judge Druffel had in (Exhibit E) in holding my patent valid in Cincinnati.

If my patent was held valid there would have been an accounting. The public would have known the Blue River Constructors used tons of limestone in the diesel locomotive scrubbers to detoxify the toxic nitric acid gas

in diesel exhaust while driving the 23-mile Roberts tunnel (Exhibit K). This being so, it would take thousands of tons of limestone to neutralize the toxic nitric acid gas now going into our cities' air from the thousands of General Motors diesel buses and railroad locomotives serving our cities.

I wish to assure this honorable Court I make this request not to delay the case as my patent expires in a few years. Time is of the essence.

This ionized diesel exhaust electrically charges a city's atmosphere making the homogeneous toxic gray olefin smog now in our cities (Exhibits G and H). General Motors has engendered numerous press releases which indict the public's innocent gasoline automobiles as the cause of the toxic gray olefin smog that now besets our cities. The U. S. Public has only my Exhibit E which if given permission by the Supreme Court of the United States can demonstrate to the District Court and the people of the United States that it is the diesel exhaust and not the public's gasoline automobiles which has opened Pandora's box of smog in our cities. Exhibits A, B, C and D show what General Motors diesel 6-71 diesel bus engines did to the Idarado mine air and now in our cities air and their "Detroit Diesel"* engineers at the time, 1951, knew this toxic gray olefin smog was propagated by their 6-71 diesel bus engines in the Idarado mine air; as now in city air (Exhibits G and H).

Quoting from "Chemical and Engineering News" of October 24, 1966:

*General Motors division 3 which manufactures all diesel engines.

Sent to the President was a modestly revised air pollution control bill. Under this compromise bill the public health service receives $186 million over three years for grants to develop, establish, or improve local air pollution abatement programs. Current spending is 35 million a year. The bill is also designed to spur local activity by tying federal grants to assurances that recipients use the money to help release more local funds for pollution abatement.

This money will be used to avoid pinpointing the cause of the toxic gray olefin smog in our cities. The toxic gray olefin smog which covers our landscape comes as it did in the Idarado mine, Exhibits A, B, C and D, wholly from General Motors 2-cycle diesel bus engine crank case oil. This oil is used to lubricate the two synchronizing gears on the scavenging blower. A portion of this oil is sucked through the neoprene oil seals on the cycloidal blower's drive shafts and is necessary to lubricate these oil seals. This oil then mixes with the blower's scavenging air and is vaporized by the hot (800° F.) diesel exhaust when blowing the spent exhaust out of the cylinders of all General Motors 2-cycle diesel engines used on their diesel railroad engines and diesel buses.

The General Motors 6-71 2-cycle diesel bus engine is a very popular diesel engine for use on underground mining vehicles. We have our conditioners on hundreds of these engines in underground use. The crank case oil in the scavenging air and diesel exhaust condenses on the fist size limestone bed in passing through the interstices, since the velocity of the exhaust gas is low as is the temperature (100° F.) of the conditioner or scrubber as the miners call it. At intervals depending on the leakage

through the neoprene oil seals on the blower shafts, this oil coating on the limestone must be scrubbed off. This requires a special detergent which will dissolve the oil. This revivifies the surface of the limestone. We call this detergent XOTOX stabilizer (Exhibit "G"). After the detergent has dissolved the oil off the limestone during the scrubbing action the oil water sludge is drained out of the conditioner and fresh water is added and the unit is put back in operation. This crank case oil from the blower on the 2-cycle diesel railroad and bus engines is atomized by the exhaust heat into toxic gray olefin smog that covers our cities' landscape and fills our made canyons between skyscrapers (Exhibit F) with toxic gray olefin smog.

I pointed this out in letters, copies of which I sent to General Motors. Shortly thereafter General Motors had their A. C. division which make oil and air filters for their cars develop a device which on the public's automobiles infers this crank case oil which comes from their 2-cycle diesel engines and forms the toxic gray olefin smog in our cities comes from the public's gasoline automobiles. They then got the American Automobile Manufacturers Association to accept this device and reason for smog as coming from the gasoline automobile when actually it comes from their 2-cycle diesel power in city transit service.

Quoting from Popular Science of July 1962, page 47: "All (1963) cars will be equipped with positive crank case ventilation — the system for returning crank case fumes to the cylinders for reburning."

On the 1965 cars this worthless anti-smog anti-air

pollution device attached at the factory cost the gasoline automobile buyer $373,980,999 dollars.

It sells for around $59 each on the Plymouth. There were around 6,338,661* cars made last year with this worthless anti-air pollution device which cost the public $373,980,999.

They have buncoed the public out of almost $374 million last year because on 4-cycle diesel engines which have an oil filter spout breather from the crank case the limestone in my conditioner used on 4-cycle diesel engines in mines never need a detergent scrubbing since *there is no accumulation of crank case oil on the limestone from the 4-cycle diesel exhaust or oil smog in the mine air as with the 2-cycle General Motors 2-cycle diesel engines untreated exhaust,* proving the public's gasoline 4-cycle engine is innocent in causing the gray olefin smog in our cities.

If common law is nothing else but reason one may assume my attorneys were not interested in an accounting based on the 8 million dollars saved by Blue River Constructors' bid of $33 million against the $41 million of Peter Kiewitt and Morrison Knutson on the 23-mile Denver Water Board tunnel (Exhibit K). They were interested in keeping from the court and the public the anhydrous nitric acid radical (NO_2) which diesel engines discharge which makes that gray olefin smog in our cities which Exhibit "E" would have made evident and the basis upon which the judge could have held my patent valid.

*Ward's Automotive Reports.

General Motors makes about half of the gasoline pleasure cars, therefore the toxic gray olefin smog created by their diesel power in our cities will gross them around $187 million year after year. Exhibit "E" together with my testimony which I thought my attorneys would be anxious to put on would surely have got my patent validated, and an accounting on $8 million saved, but what is $8 million against $187 million General Motors grosses on the smog they create by their diesel engines in our cities with impunity in the absence of exposure by Exhibit E.

Air pollution, it has been estimated, costs the U. S. about $15 billion in economic losses in 1965, says George A. Hoffman, page 40, in the Scientific American of October 1965, and no wonder. I can in my invention make from a 6-71 General Motors diesel bus engine's exhaust 50 gallons of nitric acid having a pH from 2.5 to 3 in 10 minutes. I can prove in the course of a day's operation a diesel bus discharges around 50 pounds of toxic dilute nitric acid gas. Nitric acid gas is one of the three strongest acid gases extant and our citizens in our cities are breathing it 24 hours per day. Its tolerance is set at 5 Parts Per Million, whereas the tolerance for carbon monoxide is 100 P.P.M. The 0.1% of nitric acid gas in diesel exhaust is 20 times more toxic than carbon monoxide in auto exhaust.

Diesel exhaust gas toxicity is cumulative; because the lung tissue its nitric acid gas destroyed yesterday, is added to what it destroys today. The aged are especially susceptible to emphysema so induced. Carbon monoxide even when inhaled from cigaret smoke does not destroy lung tissue, the nitric acid gas from diesel exhaust

inhaled with it does, meaning that low concentrations of nitric acid gas from diesel exhaust in city air are *toxic* and the low concentrations of carbon monoxide from gasoline automobile exhaust are not; but by General Motors propaganda is made the scape-goat in the public's mind, shrouding in mystery the death and destruction being wrought in our cities by diesel bus exhaust.

In this petition I am recounting 30 years of diesel exhaust gas conditioning practice. I can assure you the toxic air mentioned in Exhibit "F" is the result of displacing the New York City crosstown electric cars and the elevated electric uptown passenger service with General Motors diesel buses. To hide the death dealing toxic gray olefin smog G. M. diesel buses brought to New York City infers the solution is for the public to buy General Motors new Electric Bear automobile introduced October 28, 1966 in Detroit. General Motors has made billions displacing smog-free electric coaches in our cities such as Denver, infers through George A. Hoffman it is the public's gasoline automobiles (October Scientific American page 34) which is the cause of the smog the diesel bus has brought to our cities by suggesting the public buy and use smog-free electric autos.

Without the court and the public being informed that it is the anhydrous nitric acid gas inherent in diesel internal combustion engine exhaust (which on account of its toxicity and smog propensity Russia excludes from their cities) and which is absent in gasoline automobile engine combustion, millions of dollars ($186 million) of the public's money will be wasted witch hunting for this basic enigmatic cause of our present cities' toxic air pollution from diesel anhydrous nitric acid exhaust gas and the

basic cause of our 400% rise in emphysema in the past ten years will not be found, and emphysema deaths (struggle for breath) will continue to rise in our cities.

Perfumed poison, a new additive that makes noxious diesel exhaust fumes smell like floral bouquets, is being merchandised by Albert Varley & Co., "The Architectural Forum," September 1966. (Exhibit "L")

The Supreme Court of the United States knows now that General Motors knew in April 1951 that the exhaust of their 6-71 diesel bus engines used in the Idarado mine was deadly. Exhibits A, B, C, and D.

Breathing the exhaust in the mine from General Motors 6-71 diesel bus engines, the Idarado miners cried out, "The air we breath is killing us." Breathing the exhaust on the New York City streets from General Motors 6-71 diesel bus engine exhaust, the New York Times editor cries out, "The air we breathe is killing us."

General Motors' propaganda subtlety continues to hide their deadly diesel exhaust.

Says Madison Avenue for their best client (ostensibly free), facetiously as did Marie Antoinette with disdain, put perfume in it and make it pleasant as well as deadly.

The public will take the humor out of the death General Motors diesel bus exhaust dispenses into our cities' air if I am granted permission to demonstrate Exhibit "E" to the Denver District Court as I did to Judge Druffel of the Cincinnati District Court, which will make known to the public the 0.1% of toxic anhydrous nitric acid gas inherent in General Motors diesel exhaust. (Exhibits "M" and "N")

By my attorneys' decision, Judge Christenson did not witness and observe the chemical and physical demonstration of Exhibit "E" which absorbed the anhydrous nitric acid gas from the diesel exhaust and the limestone thereafter continually automatically detoxifying it.

Mr. Justice Holmes in *Mineral Separation North American Corporation v. Magma Copper Company*, 280 U.S. 400, says, "There is no 'of course' as to what nature can do except as proved by observation and experiment."

My attorneys denied me the right to give to the Court the opportunity to observe the chemical reactions that transpired in the functioning of my chemical patent method of making diesel exhaust nonhazardous and proving it to be the toxic nitric acid gas in the diesel exhaust by the classic diphenylamine method (Scott's Analysis, page 631).

Judge Druffel, in holding my patent valid, observed from Exhibit "E" what Mr. Justice Holmes said was necessary in determining the function of a chemical patent. Judge Christenson did not make the same observation in holding my patent invalid, because this vital evidence was withheld from him by my attorneys. My right to a fair trial under Article 5 of the Constitution was denied me.

In the interest of humanity and the man on the street who must breath this anhydrous nitric acid gas from diesel exhaust during his working hours, I supplicate your indulgence to please reconsider.

Respectfully submitted,

JOSEPH P. RUTH, *Respondent, Pro Se*
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